

ANGELA RODRIGUEZ, MARIA RODRIGUEZ, ET AL., PETITIONERS, VS. HON. JUAN DE BORJA, AS JUDGE OF THE COURT OF FIRST INSTANCE OF BULACAN, BR. ILL, ANATOLIA PANGI-LINAN AND ADELAIDA JA...

G.R. No. L-21993. June 21, 1966

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Petitioners Angela, Maria, Abelardo and Antonio, sur-named Rodriguez, petition this Court for a writ of certiorari and prohibition to the Court of First Instance of Bulacan, for its refusal to grant their motion to dismiss its Special Proceeding. No. 1331, which said Court is alleged to have taken cognizance of without jurisdiction.

The facts and issues are succinctly narrated in the order of the respondent court, dated June 13, 1963 (Petition, Annex 0), in this wise:

"It is alleged in the motion to dismiss filed by Angela, Maru Abelardo and Antonio Rodriguez, through counsel, that this C "has no jurisdiction to try the above-entitled case in view pendency of another action for the settlement of the estate the deceased Rev. Fr. Celestino Rodriguez in the Court of Instance of Rizal, namely, Sp. Proceedings No. 3907 entitled the matter of the Intestate Estate of the deceased Rev. Celestino Rodriguez' which was filed ahead of the instant case"

The records show that Fr. Celestino Rodriguez died on Februar 12, 1963 in the City of Manila; that on March 4, 1963, tolia Pangilinan and Adelaida Jacalan delivered to the Court of Bulacan a purported last will and testament Rodriguez; that on March 8, 1963, Maria Rodriguez and Rodriguez, through counsel, filed a petition, for leave of c allow them to examine the alleged will; that on March before the Court could act on the petition, the same was withdrawn; that on March 12, 1963, aforementioned petitioners filed before the Court of First Instance of Rizal a petition for the settlement of the intestate estate of Fr. Rodriguez alleging, among other things, that Fr. Rodriguez was a resident of Paranaque, Rizal, and died without leaving a will and praying that Maria Rodriguez be appointed as Special Administratrix of the estate; and that on March! 12, 1963 Apolonia Pangilinan and Adelaida Jaca-lan filed a petition in this Court for the probate of the will delivered by them on March 4, 1963. It was stipulated by the parties that Fr. Rodriguez was born in Paranaque, Rizal; that he was parish priest of the Catholic Church in Hagonoy, Bulacan, from the year 1930 up to the time of his death in 1963; that he was buried in Paranaque, and that he left real properties in Rizal, Cavite, Quezon City and Bulacan.

The movants contend that since the intestate proceedings in the Court of First Instance of Rizal was filed at 8:00 A.M. on March 12, 1963 while the petition for probate was filed in the Court of First Instance of Bulacan at 11:00 A.M. on the same date, the latter Court has no jurisdiction to entertain the petition for probate, citing as authority in support thereof the case of Cngsingco Vda. de Borja vs. Tan and De Borja, G. R. No. L-7792, July 27, 1955.

The petitioners Pangilinan and Jacalan, on the other hand, take the stand that the Court of First Instance of Bulacan acquired jurisdiction over the case upon delivery by them of the will to the Clerk of Court on March 4, 1963, and that the case in this Court therefore has precedence over the case filed in Rizal on March 12, 1963."

The Court of First Instance, as previously stated, denied the motion to dismiss on the ground that a difference of a few hours did not entitle one proceeding & preference over the other; that, as early as March 7, movants were aware of the existence of the purported will of Father Rodriguez, deposited in the Court of Bulacan, since they filed a petition to examine the same. And that movants clearly filed the intestate proceedings in Rizal "for no other purpose than to prevent this Court (of Bulacan) from exercising jurisdiction over the probate proceedings". Reconsideration having been denied,

movants, now petitioners, came to this Court, relying principally on Rule 73, section 1, of the Rules of Court, and invoking our ruling in *Ongsingco vs. Tan and De Borja* L-7792, July 27, 1955.

"SECTION 1. Where estate of deceased persons settled.—If the decedent is an inhabitant of the Philippines at the time of his death, whether a citizen or an alien, his will shall be proved or letters of administration granted, and his estate settled, in the Court of First Instance in the province in which he resides at the time of his death, and if he is an inhabitant of a foreign country, the Court of First Instance of any province in which he had estate. The Court first taking cognizance of the settlement of the estate of a decedent, shall exercise jurisdiction to the exclusion of all other courts. The jurisdiction assumed by a court, as far as it depends on the place of residence of the decedent, or of the location of his estate, shall not be contested in a suit or proceeding, except in an appeal from that court, in the original case, or when the want of jurisdiction appears on the record."

We find this recourse to be untenable. The jurisdiction of the Court of First Instance of Bulacan became vested upon the delivery thereto of the will of the late Father Rodriguez on March 4, 1963, even if no petition for its allowance was filed until later, because upon the will being deposited the Court could, *motu proprio*, have taken steps to fix the time and place for proving the will, and issued the corresponding notices conformably to what is prescribed by section 3, Rule 76, of the Revised Rules of Court (Section 3, Rule 77, of the old Rules) :

"SEC. 3. Court to appoint time for proving will. Notice to be published—When a will is delivered to, or a petition for the allowance of a will is filed in, the Court having jurisdiction such Court shall fix a time and place for proving the will and all concerned may appear to contest the allowance thereof, and shall cause notice of such time and place to be published three (3) weeks successively, previous to the time appointed, in a newspaper of general circulation in the province.

But no newspaper publication shall be made where the Petition for probate has been filed by the testator himself."

The use of the disjunctive in the words "when a will is delivered to or a petition for the allowance of a will is filed" plainly indicates that the court may act upon the mere deposit therein of a decedent's testament, even if no petition for its allowance is as yet filed. Where the petition for probate is made after the deposit of the will, the petition is deemed to relate back to the time when the will was delivered. Since the testament of Fr. Rodriguez was submitted and delivered to the Court of Bulacan on March 4, while petitioners initiated intestate proceedings in the Court of First Instance of Rizal on, March 12, eight days later, the precedence and exclusive jurisdiction of the Bulacan court is incontestable.

But, petitioners, object, section 3 of revised Rule 76 I (old Rule 77) speaks of a will being delivered to "the Court having jurisdiction", and in the case at bar the Bulacan court did not have it because the decedent was domiciled in Rizal province. We can not disregard Fr. Rodriguez's 33 years of residence as parish priest in Hagonoy, Bulacan (1930-1963) ; but even if we do so, and consider that he retained throughout some *animus revertendi* to the place of his birth in Paranaque, Rizal, that detail would not imply that the Bulacan court lacked jurisdiction. As ruled in previous decisions, the power to settle decedents' estates is conferred by law upon all courts of first instance, and the domicile of the testator only affects the venue but not the jurisdiction of the Court {*In re Kaw Singco*, 74 Phil. 239; *Reyes vs. Diaz*, 73 Phil. 484; *Bernabe vs. Vergara*, 75 Phil. 76}. Neither party denies that the late Fr. Rodriguez was deceased, or that he left personal property in Hagonoy, province of Bulacan (t. s. n., p. 46,

hearing of June 11, 1963, Annex "H", Petition, Rec, p. 48). That is sufficient W1 the case before us.

In the Kaw Singco case (ante) this court ruled that:

"* * *. If we consider such question of residence as one affecting the jurisdiction of the trial court over the subject-matter, the effect shall be that the whole proceedings including all decisions on the different incidents which have arisen in court will have to be annulled and the same case will have to be commenced anew before another court of the same rank in another province. That this is of mischievous effect in the prompt administration of justice is too obvious to require comment. (Cf *Tanunchuan vs. Dy Buncio & Co.*, G. R, No. 48206, December 31, 1942). Furthermore section 600 of Act No. 190, providing that the estate of a deceased person shall be settled in the province where he had last resided, could not have been intended as defining the jurisdiction of the probate court over the subject-matter, because such legal provision is contained in a law of procedure dealing merely with procedural matters, and, as we have said time and again, procedure is one thing and jurisdiction over the subject-matter is another. (*Attorney-General vs. Manila Railroad Company*, 20 Phil. 523.) The law of jurisdiction—Act No. 136, Section 56, No. 5 confers upon Courts of First Instance jurisdiction over all probate cases independently of the place of residence of the deceased.[1] Since, however, there are many courts of First Instance in the Philippines, the Law of Procedure, Act No. 190, section 600, fixes the venue or the place where each case shall be brought. Thus, the place of [residence of the deceased is not an element of jurisdiction over the subject-matter but merely of venue. And it is upon this ground that in the new Rules of Court the province where the estate of a deceased person shall be settled is properly called "venue" (Rule 75, section 1.) Motion for reconsideration is denied."

The estate proceedings having been initiated in the Bulacan Court of First Instance ahead of any other, that court is entitled to assume jurisdiction to the exclusion of all other courts, even if it were a case of wrong venue, by express provisions of Rule 73 (old Rule 75) of the Rule of Court, since the same enjoins that:

"The Court first taking cognizance of the settlement of 1 estate of a decedent shall exercise jurisdiction to the exclusion of all other courts." (Sec. 1)

This disposition presupposes that two- or more courts have been asked to take cognizance of the settlement of estate. Of them only one could be of proper venue, the rule grants precedence to that Court whose jurisdiction is first invoked, without taking venue into account.

There are two other reasons that militate against the success of petitioners. One is that their commencing intestate proceedings in Rizal, after they had learned of the delivery of the decedent's will to the Court of Bulacan, was in bad faith, patently done with a view to divesting the latter court of the precedence awarded it by the Rules. Certainly the order of priority established in Rule 73 (old Rule 75) was not designed to convert the settlement of decedent's estates into a race between applicants, with the administration of the properties as the price for the fleetest.

The other reason is that, in our system of civil law, intestate succession is only subsidiary or subordinate to the testate, since intestacy only takes place in the absence of a valid operative will. Says Article 960 of the Civil Code of the Philippines:

"ART. 960. Legal or intestate succession takes place:

- (1) If a person dies without a will, or with a void will, or one which has subsequently lost its validity;
- (2) When the will does not institute an heir to or dispose of all the property belonging to the testator. In such case, legal succession shall take place only with respect to the property of which the testator has not disposed;
- (3) If the suspensive condition attached to the institution of heir does not happen or is not fulfilled, or if the heir dies before the testator, or repudiates the inheritance, there being no substitution, and no right of accretion takes

place;

(4) When the heir instituted is incapable of succeeding, except in cases provided in this Code."

Therefore, as ruled in *Castro, et al. vs. Martinez*, 10 Phil. 307 "only after final decision as to the nullity of testate succession could an intestate succession be instituted in form of pre-established action". The institution of intestacy proceedings in Rizal may not thus proceed while the probate of the purported will of Father Rodriguez is pending.

We rule that the Bulacan Court of First Instance was entitled to priority in the settlement of the estate in question, and that in refusing to dismiss the probate proceedings, said Court did not commit any abuse of discretion. It is the proceedings in the Rizal Court that should be discontinued.

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Wherefore, the writ of certiorari applied for is denied. Costs against petitioners Rodriguez.

Concepcion, C. J., Barrera, Dizon, Regala, Makalintal, Bengzon, J. P., Zaldivar, and Sanchez, JJ., concur.

Writ denied.

[1] Now section 44, subpar. (e) of the Judiciary Act (R.A. No. 296)

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